



October 29, 2010

Christopher D. Roy, Esq.
Downs Rachlin Martin PLLC
P.O. Box 190
Burlington, VT 05402-0190
croy@drm.com

Dear Chris:

Re: Jurisdictional Opinion #3-138, Rafferty Property, Hartland

This is a jurisdictional opinion regarding a ten-acre parcel of land owned by Paul and Sherrill Rafferty in Hartland, Vermont. As discussed below, I have determined that there is no Act 250 jurisdiction over this parcel and I relied upon the facts and analysis as follows:

1. On July 16, 2010, I issued a jurisdictional opinion in the form of a Project Review Sheet regarding activities occurring on the 25.2-acre property owned by Paul and Sherrill Rafferty in Hartland. This jurisdictional opinion concluded that the work the Raffertys have undertaken on their property is not commercial and an Act 250 permit was not required. This opinion was sent to the Raffertys, statutory parties, Michel Guite and you. This opinion was not appealed by any party and is final.
2. On July 28, 2010, Dr. Guite wrote me a letter asking several hypothetical questions about property owners "such as the Buddhist Church and Neighbor A." I responded on August 5, 2010, indicating we do not issue jurisdictional opinions on hypotheticals such as one posed in Dr. Guite's letter.
3. On August 31, 2010, I received your formal request for a binding jurisdictional opinion regarding a 10-acre portion of the 25.2-acre parcel owned by the Raffertys which was previously owned by the Unified Buddhist Church, Inc. (UBC). In your request, you asked the two questions as stated below:
 - a. Should the ten-acre parcel conveyed to the Raffertys by UBC be treated as involved land?
 - b. Would the jurisdictional status of the ten-acre lot change if it was conveyed to Dr. Guite?

4. On January 6, 2010, Dr. Guite entered into an Assurance of Discontinuance (AOD) with the Land Use Panel of the Natural Resources Board to resolve questions of Act 250 jurisdiction. Pursuant to the AOD, which was entered as an Order of the Environmental Court on January 13, 2101, Dr. Guite is required to remove certain improvements to the property and file evidence of the removal with the District Coordinator. After the Coordinator's certification that the changes have been completed and has been recorded in the Hartland Land Records, all jurisdiction arising under 10 V.S.A. Chapter 151 (Act 250) that has attached to the Property shall be dissolved.

5. Although Dr. Guite has not yet presented evidence of compliance with the above-referenced provision of the AOD, and, hence, a certification has yet to be recorded, some of the required removal has taken place and it is the Coordinator's expectation that the information will be filed. Once the material is filed and duly recorded, Act 250 jurisdiction shall dissolve. To do otherwise, would mean Dr. Guite would be in violation of the Assurance of Discontinuance, a Court Order.

Conclusion

In my opinion, provided Act 250 jurisdiction is dissolved under the terms of the AOD, the question as to whether the Rafferty land was involved land to the UBC commercial activities is moot. Upon completion of the removal of improvements and recording of the coordinator's certification of same, there is no Act 250 jurisdiction on the former UBC property with or without the inclusion of the parcel sold to the Raffertys. Further, this determination is not affected by ownership of the parcel, be it owned by the Raffertys, or a subsequent purchaser.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Linda Matteson, District 3 Coordinator
Linda.Matteson@state.vt.us
802-885-8843

cc: Certificate of Service

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Division Superior Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the VRECP. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The Environmental Court mailing address is: Environmental Division Superior Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)